

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
Final Utility Orders
Selected for Publication
February 2005

February 9, 2005

In the Matter of the Review of

DOCKET NO. UT-023003

Unbundled Loop and Switching Rates;
the Deaveraged Zone Rate Structure;
and Unbundled Network Elements,
Transport, and Termination (Recurring
Costs)

TWENTY-FOURTH SUPPLEMENTAL
ORDER ESTABLISHING RECURRING
COSTS AND RATES

The Commission sets unbundled network element rates, based on Total Element Long Run Incremental Cost (TELRIC) pricing principles, to promote telecommunications competition and to establish accurate price signals to guide carrier investment strategies. The TELRIC methodology: 1) assumes the use of best available technology within the limits of existing network facilities; 2) makes realistic assumptions about capacity utilization rates, spare capacity, field conditions, and fill factors; 3) employs a forward-looking, risk-adjusted cost of capital; 4) uses economic depreciation rates for capital recovery; and 5) follows cost-causation principles to attribute indirect expenses to network elements. ¶ 17; § 252(d) of the 1996 Telecom Act;

Decisions of the Federal Communications Commission's (FCC's) Wireline Competition Bureau that are under review by the FCC are not binding on the Commission to the degree an FCC final order would bind the Commission, although such decisions may provide insights and suggest solutions worthy of adoption by the Commission. ¶¶ 36-37; 47 C.F.R. § 0.5 (c).

The Commission's reliance on a cost of equity cost model, such as the Discounted Cash Flow (DCF) model, depends on the number of variables in the model, past reliability of the model in Commission proceedings, and ability to adjust the model to compensate for perceived flaws. ¶ 69; § 252(d); RCW 80.36.140.

The Commission will not adopt financial depreciation lives absent a review of the true effect of technological advances on depreciation lives. The forum for such an examination is usually an application for a change in depreciation lives. ¶¶ 96-97; § 252(d); RCW 80.36.140.

The Commission prefers cost models that are open, flexible, easily understood and capable of verification. The Commission will give weight to cost models depending on the degree to which they meet the Commission's cost model criteria. ¶¶ 220-226; 231-233; 236-237; 245-247; 271-273; 444-449; Appendix A; § 252(d); RCW 80.36.140.

The Commission may adopt different rates for reciprocal compensation and local switching (traffic-sensitive), respectively, based on the different cost standards established for reciprocal compensation and local switching in the 1996 Telecom Act. ¶ 528; § 252(d)(1); § 252 (d)(2).

A rate order is not constitutionally objectionable unless it is shown to jeopardize the financial integrity of the company or fails to provide shareholders with sufficient compensation for their risk. ¶ 546; *US Constitution, Article V*.

The test used to determine whether an unconstitutional taking of private property has occurred, in the context of a regulatory rate proceeding, is generally the “used and useful” test—that is, whether utility investments have been actually used in utility service. ¶ 547; *US Constitution, Article V*.

February 9, 2005

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

ADVANCED TELECOM GROUP,
INC., et al.

Respondents.

DOCKET NO. UT-033011

ORDER NO. 20

NOTICE OF ORAL ARGUMENT

The Commission may exercise its discretion to accept a petition seeking interlocutory review if the petition alleges a basis for interlocutory review under WAC 480-07-810(2), and the specific support for the request for review can be determined from the pleading. *¶ 27; WAC 480-07-810.*

The question of what process is due in a particular proceeding depends upon the nature of the parties' interests and the severity of possible deprivation of those interests. *¶ 41; RCW 69.50.505; US Constitution, 14th Amendment.*

In applying the Commission's intervention rule, the Commission must look not only to whether an intervenor has a substantial interest in the subject matter of the hearing, but also whether the intervenor's participation is in the public interest. *¶ 44; WAC 480-07-355(3)(4).*

The Commission applies principles of standing when considering petitions for intervention. *¶ 44; WAC 480-07-355(3)(4).*

When a party: asserts as its interest in a proceeding only the desire for a certain outcome; is not a named respondent; and, has not filed a third-party claim or a separate claim for enforcement, the party has not demonstrated substantial interest for the purpose of establishing standing in a proceeding. *¶¶ 43-44; WAC 480-07-355.*

After granting intervenor status, the Commission retains discretion to place conditions on or dismiss the intervenor at any time.
¶ 36; RCW 34.05.443; WAC 480-07-355.

The Commission's decision to limit an intervenor's participation is not an abuse of discretion when the statute and the agency's procedural rules allow the Commission to apply discretion in limiting an intervenor's participation, and the Commission has found a lack of substantial interest, consistent with the statute and rules. *¶ 47; RCW 34.05.443; WAC 480-07-355(3)(4).*

The Administrative Procedure Act (APA) encourages settlement and codifies the important policy that a settlement between two or more parties cannot dispose of the valid claims of third persons who do not agree to the

settlement, or impose obligations on those same parties or persons. Under the APA, an agency may consider settlements that are not unanimous, if non-participating parties have adequate opportunity to litigate. *¶ 48; RCW 34.050.060.*

Agencies generally have discretion in deciding to pursue enforcement actions and retain their prosecutorial discretion in determining whether settlement is appropriate in enforcement actions.

¶ 51; RCW 80.01.040; 80.04.110; 80.04.120.

Relevance is not the sole factor in determining whether to allow discovery. *¶ 58; WAC 480-07-400(4).*

The Commission has discretion under WAC 480-07-740(2)(c), to allow or limit discovery on a proposed settlement. *¶ 58; WAC 480-07-740.*

The Commission may deny discovery when the information requested is extensive and it would require significant expense and effort by a party to locate it; the Commission will consider the needs of the proceeding and the limitations of the party's resources in deciding whether to deny discovery. *¶ 60; WAC 480-07-400, et seq.*

Discovery may be inappropriate when the probative value of the information requested is questionable, and the burden on the party receiving the

discovery request is extensive.
¶ 61; WAC 480-07-400, *et seq.*

A party's offer of proof does not justify additional briefing or an evidentiary hearing when the offer of proof proposes no evidence that is not already included in the record through prefiled testimony or exhibits attached to prefiled testimony. ¶¶ 68-69; WAC 480-07-740.

February 28, 2005

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

DOCKET NOS. UG-040640 and UE-
040641 (consolidated)

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

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In the Matter of the Petition of
PUGET SOUND ENERGY, INC.,

DOCKET NO. UE-031471
(consolidated)

For an Order Regarding the
Accounting Treatment for Certain
Costs of the Company's Power Cost
Only Rate Filing

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In the Matter of the Petition of
PUGET SOUND ENERGY, INC.,

DOCKET NO. UE-032043
(consolidated)

For an Accounting Order Authorizing
Deferral and Recovery of Investment
and Costs Related to the White River
Hydroelectric Project

ORDER NO. 06

FINAL ORDER

Establishing a capital structure for ratemaking purposes requires the Commission to strike an appropriate balance between debt and equity on the bases of economy and safety. The economy of lower cost debt, on which the Company has a legal obligation to pay interest, must be balanced against the safety of higher cost common equity on which the Company has no legal obligation to pay a return at any particular time. The Commission has used actual, *pro forma*, or imputed capital structures to strike the right balance and determine overall rate of return on a case-by-case basis. RCW 80.28.020; WAC 480-07-510.

Establishing the proper return on equity is not a precise science; it is an exercise in informed judgment. RCW 80.28.020; WAC 480-07-510.

To determine rates that will apply prospectively, the Commission considers various restating actual and *pro forma* adjustments to the test period operating revenues and deductions. "Restating actual adjustments" adjust the company's booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings, or adjust from an as-recorded basis to a basis accepted for rate-making purposes. *Pro forma*

adjustments give effect to known and measurable changes not offset by other factors occurring during or after the test year. *RCW 80.28.020; WAC 480-07-510.*

The Commission requires a company that wishes to book costs to a deferral account for treatment as a regulatory asset to first apply for and obtain express authority to do so. Deferred accounting always requires express, advance approval from the commission. *RCW 80.28.020; WAC 480-07-510.*

February 28, 2005

WASHINGTON UTILITIES AND
TRANSPORATION COMMISSION,

Complainant,

v.

ADVANCED TELECOM GROUP,
INC.,

Respondent.

DOCKET NO. UT-033011

ORDER NO. 21

ORDER ADOPTING AND
APPROVING SETTLEMENT
AGREEMENT

The Commission may approve settlements when: it is lawful to do so, the settlement terms are supported by the record, and the result is consistent with the public interest. In considering a settlement, the Commission

determines whether a proposed settlement meets legal and policy standards. *¶ 45; WAC 480-07-740; WAC 480-07-750.*

In reviewing a proposed settlement agreement, the Commission must make findings of fact and conclusions of law concerning all material issues of fact, law and discretion relevant to its decision, but need not make findings on every issue raised in a complaint. *¶¶ 46 & 53; RCW 34.05.461.*

Intervenors in enforcement actions have the right to have their objections heard, but do not have the right to block a settlement to which they object. *¶ 47; RCW 34.05.060; RCW 34.05.443; WAC 480-07-355(3)(4).*

When the Commission addresses a matter of first impression in resolving a proposed settlement in a complaint proceeding, it is reasonable for the Commission to dismiss the allegations if the parties have agreed to a substantial penalty and remediation consistent with testimony presented in the proceeding. *¶ 54; RCW 80.01.040; 80.04.110; 80.04.120.*